IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 16TH OCTOBER 2007 / 24TH ASWINA 1929

WP(C).No. 27886 of 2007(T)

PETITIONER:

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1. A.M. UMMER,
   POOL LEADER, HEADLOAD WORKERS UNION (AITUC),
   POOL NO.32, K.S.R.T.C. BUS STAND AREA, PALAKKAD.

2. M. ABBAS,
   PRESIDENT, HEADLOAD WORKERS UNION (CITU),
   POOL NO.32, K.S.R.T.C. BUS STAND AREA, PALAKKAD.

BY ADV. SRI.V.CHITAMBARESH

RESPONDENTS:

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1. THE DISTRICT LABOUR OFFICER, PALAKKAD.

2. THE ASSISTANT LABOUR OFFICER,
   CIRCLE II, PALAKKAD.

3. BABY SAROJA,
   ADITHYA HERO HONDA, THOTTINGAL LANE,
   NEAR K.S.R.T.C. BUS STAND, PALAKKAD.

BY GOVERNMENT PLEADER SMT. M.R. SREELATHA.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT.P1: COPY OF THE IDENTITY CARD ISSUED TO ONE OF THE HEADLOAD WORKERS OF POLL NO.32 BY THE SECOND RESPONDENT DATED NIL.

EXT.P2: COPY OF THE NOTICE ISSUED BY THE FIRST RESPONDENT DIRECTING THE ACCUSED TO APPEAR IN THE CRIMINAL COURT DATED 11.9.2007.

EXT.P3: COPY OF THE JUDGMENT IN O.P.NO.7399/1996 ON THE FILE OF THIS HON'BLE COURT DATED 18.7.96.

EXT.P4: COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONERS TO THE FIRST RESPONDENT WITH COPY TO THE SECOND RESPONDENT DTED 17.9.2007.

EXT.P5: COPY OF THE RECEIPT ISSUED FOR UNLOADING DONE AT 'ROYAL MOTORS' DATED 29.5.2007

EXT.P6: COPY OF THE RECEIPT ISSUED FOR UNLOADING DONE AT 'EICHER MOTORS LIMITED'DATED 25.7.2006.

TRUE COPY

PA TO JUDGE.

S. SIRI JAGAN, J.

W.P.(C)No. 27886 OF 2007

Dated this the 16th day of October, 2007

JUDGMENT

The petitioners are office bearers of two unions of headload workers in the KSRTC bus stand area, Palakkad. They claim headload work in the establishment of the 3rd respondent. Earlier, the 3rd respondent had approached this Court and obtained police protection as per Ext.P3 judgment for getting headload work in their establishment done with their own employees. The petitioners contend that, that judgment is no longer binding on the petitioners, in view of subsequent Full Bench decisions on the subject, wherein this Court has held that even own employees of the employer are statutorily bound to obtain registration under Rule 26A of the Kerala Headload Workers Rules. According to the petitioners, the workers employed by the 3rd respondent have not obtained registration under Rule 26A of the Kerala Headload Workers Rules and therefore they cannot now, deriving support from Ext.P3 judgment, continue to do headload work in the establishment of

the 3rd respondent without getting themselves registered under Rule 26A of the Kerala Headload Workers Rules. The petitioners therefore seek the following reliefs.

> "(i) issue a writ in the nature of mandamus directing the first respondent to consider Ext.P4 on merits expeditiously after affording to the petitioners and respondents 2 and 3 an opportunity of being heard and take necessary follow up action as regards loading and unloading work;
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> ii) issue a writ in the nature of mandamus directing the first respondent to see to it that the workers of Pool No.32 do the loading and unloading work at the establishment of the third respondent especially in the absence of attached permanent registered headload workers.
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> iii) declare that the workers of Pool No.32 are entitled to do the loading and unloading work at the establishment of the third respondent as and when they report for work whenever a truck load of two wheelers or three wheelers arrive there at for distribution or sales".

2. The 3rd respondent has filed a counter affidavit in which their main contention is that there is no headload work involved in the activities of the establishment of the 3rd respondent and therefore the question of registration of the headload workers of the 3rd respondent does not arise.

3. I have considered the rival contentions in detail. Of course, by Ext.P3 order, the 3rd respondent had obtained an order for police protection as early as on 18.7.1996. Subsequently the law has changed in view of the Full Bench decisions in **Raghavan Vs. Superintendent of Police [1998 (2) KLT 732]** and **Karunakarakurup Vs. State of Kerala [2004(1) KLT 215]**. That being so, it is settled law that the 3rd respondent cannot get headload work in her establishment done by her own employees without obtaining registration under Rule 26A for such employees.

4. The petitioners dispute the contention of the 3rd respondent that the work in her establishment does not involve headload work. According to them, the work of the 3rd respondent's establishment involves headload work and therefore there is no merit in the contention of the 3rd respondent.

5. The question as to whether the work of the 3rd respondent's establishment involves headload work is a question of fact which has to be resolved by resort to proceedings under Section 21 of the Kerala Headload Workers Act. As such I am of opinion that the 2nd respondent should

take up this dispute and proceed under Section 21 of the Headload Workers Act after hearing the petitioners as well as the 3rd respondent. The 2nd respondent shall therefore initiate proceedings under Section 21 and take it to its logical conclusion within a period of two months from the date of receipt of a copy of this judgment.

The writ petition is disposed of as above.

S. SIRI JAGAN, JUDGE

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